

Book Review: Cases and Comments on Criminal Law, by D. A. Schmeiser

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Book Review

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CASES AND COMMENTS ON CRIMINAL LAW. D. A. SCHMEISER.
Toronto: Butterworth, Toronto: 1966. pp. 965. (\$25.50).

This casebook has the distinction of being the first hard-covered Canadian criminal law casebook. Outside of the annotations to the Criminal Code there has not been any similar casebook produced in Canada to date. (This is in marked contrast to the United States where 25 casebooks have been produced since 1850.) The purpose of the work was, according to the author, to act as a teaching aid. Thus, the question becomes whether or not a casebook on criminal law is essential or even necessary.

The teaching of law has been, and still is, an area of turmoil. Some feel that the student taught by the pure case method never really understands the basic principles due to the clouding effect of the diversity of the judgments in any one decision. On the other hand, the introduction of the casebook containing extracts from decisions may remove the cloudiness but the use of the casebook is then attacked because it is too one-sided; that is, the extracts represent the personal choice of the author. The opponents of the case method, who have little time for casebooks, see the end product of this method as somewhat of a legal technician in that the student eventually knows the rules and knows what the important decisions say but does not fully understand why. These people, the propounders of the socratic method which will hopefully produce people who can think, advocate only a limited need for a casebook. Thus, any critical analysis of Schmeiser's work must be made with a view to one or other of these two methods.

Before offering any criticism of the work a brief description of its contents is necessary. The introductory eighty-seven pages cover in a summary fashion criminal procedure, evidence, territorial jurisdiction and relations between concurrent criminal and civil proceedings. At page one of the casebook, the scope of criminal law is discussed in an extract from *R. v. Whiteford*.

A criminal offence is not an offence against an individual but is an offence against society as a whole. The King is recognised as having no partiality to any individual but as representing impartially society as a whole.

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The scope of criminal law is most important in the basic procedure of laying the information and complaint with respect to an indictable offence. An extract from the judgment of Mr. Justice Wilson in *R. v. Schwerdt*, a British Columbia Supreme Court decision, reproduced at page 2 of the casebook, deals with the role of the prosecutor and Attorney General in the area of preliminary inquiry. If the information is not laid in accordance with statutory law then an action cannot be brought as in *Campbell v. Sumida*.

In dealing with evidence or proof of crime Schmeiser includes extracts from the basic cases in the area. For instance, *Woolington v. D.P.P.*, cited at page 16 is discussed under the heading of proof beyond a reasonable doubt. The extracts are brief and the area is covered in a very few pages since it was probably anticipated that evidence would be taken as a separate area of study. Similarly the brief treatment of criminal procedure by the author was probably for the same reason.

In a discussion of concurrent criminal and civil proceedings Schmeiser has reproduced extracts from five cases, one of which, *Smith v. Selwyn*, an early English decision, lays down the common law rule. The remaining four Canadian decisions focus on the effect of Section 10 of the Criminal Code.

The bulk of the book is devoted to an examination of the principle of criminal law. In presenting cases dealing first with the physical element and then the mental element Schmeiser has selected leading cases, for instance, *R. v. Tolson* and *R. v. Prince* as well as recent Canadian decisions such as *R. v. Sawicki* and *R. v. Stundon*.

The arrangement of the cases in the remainder of the book is most interesting. Schmeiser prefaces each subsection with a series of problems, some of which are direct questions. For example: "Must a mistake of fact be reasonable before it is a defence to a crime?" Others are hypothetical problems somewhat akin to examination questions. This approach is probably designed to guide the thinking of the reader as he tackles the subsequent cases. Each case extract is followed by a case comment which is usually in the form of further relevant questions as well as references to other significant decisions. Schmeiser has included early English decisions but the majority of the material is Canadian. The Canadian cases selected represent a cross-section of provincial courts with perhaps a greater emphasis on Saskatchewan.

Vicarious liability in criminal matters is discussed in about forty pages. Nearly one-third of the book concentrates on criminal defences and justification. Sixteen separate defences are discussed with a large section being devoted to the defence of drunkenness. More than half a dozen recent Canadian decisions are included here, for example, *R. v. Vandervoort*. Parties to the offence are discussed in about one hundred pages. Schmeiser concludes with cases on specific offences. However, the treatment is sketchy and, although he deals with

homicide and theft in some detail, only a passing reference is made to equally significant offences such as assault, kidnapping, extortion, forgery and bigamy.

Any criticism of this work depends, as was stated at the beginning of this critique, on the critic's views concerning teaching methods. If it is admitted that the casebook method is the most satisfactory method of teaching then this work is invaluable. Its drawbacks are few and lie not so much in what it presents as in what it fails to present. The failure to include more material which emphasizes the scope of criminal law as well as some reference to criminal punishment is somewhat of a drawback if one feels the object of teaching is to produce socially aware, thinking lawyers. The work tends to deal with the basic principles of criminal law in a mechanical fashion and consequently, unless the casebook is used in conjunction with the socratic method of teaching, may tend to produce the dreaded legal technician.

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